

Application No.10/567,631
Nationalization of PCT/EP2004/051702
Attorney Docket No. WSP242US
Response to Notice of Non-Responsive Reply dated February 26, 2009
Date: March 26, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Matter of United States Patent Application:

Applicant(s): Gabriel Blume et al.

Examiner: Jennifer Ann Berrios

Application No.: 10/567,631

Art Unit: 4121

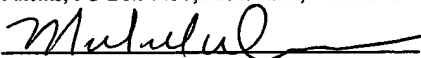
Filed: February 8, 2006

For: COSMETIC COMPOSITION
PROMOTING OXYGEN
TRANSPORT INTO THE SKIN

Confirmation Number: 1303

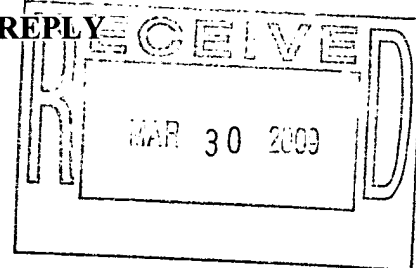
Certificate of Mailing by First Class Mail

I certify that this Response to Notice of Non-Responsive Reply is being deposited on March 26, 2009 with sufficient postage with the U.S. Postal Service as first class mail under 37 C.F.R. §1.8 and is addressed to the Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450.


Michael L. Dunn
Reg. No. 25330

RESPONSE TO NOTICE OF NON-RESPONSIVE REPLY

Mail Stop Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450



Honorable Sir:

This is in reply to the Notice of Non-Responsive Reply dated February 26, 2009 requiring an election between four species.

With due respect to the Examiner, an election was made in the prior response to restriction requirement. In particular it was stated that:

"Group 1) directed to claims 13-36 is elected with traverse. Claim 13 is the only independent claim and includes "lipid conjugate", referred to by the Examiner as "specific lipid conjugate", even though the word "specific" does not appear in the claims. All other claims are directly or indirectly dependent upon claim 1 [sic 13] and thus all also contain "lipid conjugate" (Species 1). "

Application No.10/567,631
Nationalization of PCT/EP2004/051702
Attorney Docket No. WSP242US
Response to Notice of Non-Responsive Reply dated February 26, 2009
Date: March 26, 2009

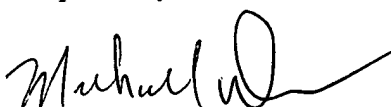
The Examiner may not agree with the claims listed by the Attorney for the Applicant that read on Specie 1 "lipid conjugate" but it is the Applicants position that all of listed claims 13-36 in fact read on that specie. If the Examiner is objecting on the ground that that the Applicant asserted that claims 13-36 read on elected Specie 1 for "lipid conjugate" **the Applicants elect Specie 1 claims to "lipid conjugate claims 13-17, 23, 33 and 36 in accordance with the claims specifically listed by the Examiner, with traverse.**

Nevertheless, as was stated in the prior response, all of claims 13-36 read on "lipid conjugate" since they all depend directly or indirectly from claim 13 that specifically includes "lipid conjugate". All dependent claims must then of necessity also contain "lipid conjugate."

The mere addition of additional components, i.e. "lipid conjugate solvent", "nicotinic compound" and/or "alcohol", in subclaims, to claims already containing "lipid conjugate", does not remove "lipid conjugate" from the claims in which additional components are added.

The restriction should therefore be withdrawn for two major reasons, i.e. a) there is unity of invention and b) even if there weren't unity of invention, all claims read on species (1).

Respectfully submitted,



Michael L. Dunn
Registration No. 25330
CUSTOMER NO. 49003
Simpson & Simpson, PLLC
5555 Main Street
Williamsville, NY 14221-5406
Telephone No. 716-626-1564

Dated: March 26, 2009

MLD/mjk

Transmittal Letter to Commissioner (Patent Pending)

Docket Number

WSP242US

Address To
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Title of Invention

COSMETIC COMPOSITION PROMOTING OXYGEN TRANSPORT INTO THE SKIN

First Named Inventor	Gabriele Blume
Application No.	10/567,631
Filing Date	February 08, 2006
Examiner	Jennifer Ann Berrios
Art Unit	4121

Transmitted herewith is:

- 1) Response to Notice of Non-Responsive Reply
- 1) Certificate of Mailing by First Class Mail
- 1) Acknowledgement Postcard

in the above identified application.

- ☒ No additional fee is required.
- ☐ A check in the amount of _____ is attached.
- ☒ The Director is hereby authorized to charge and credit Deposit Account No. 50-0822 as described below.
- ☐ Charge the amount of _____
- ☐ Credit any overpayment.
- ☒ Charge any additional fee required.
- ☐ Payment by credit card. Form PTO-2038 is attached.

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

Transmittal Letter to Commissioner (Patent Pending)

Docket Number

WSP242US

Correspondence Address

Customer Number 49003

-OR-

Name

Address

City

State

Country

Postal Code

Phone Number

E-mail Address

Certificate of Mailing by Express Mail

I hereby certify that this Transmittal Letter, accompanying documents and fee (if appropriate) are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date indicated below:

(Date of Mailing)

(Typed or Printed Name of Person Mailing Correspondence)

(Signature of Person Mailing Correspondence)

("Express Mail" Mailing Label Number)

Certificate of Mailing by First Class Mail

I hereby certify that this Transmittal Letter, accompanying documents and fee (if appropriate) are being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450 on the date indicated below:

March 26, 2009

Michael L. Dunn

(Date of Mailing)

(Name of Person Mailing Correspondence)

(Signature of Person Mailing Correspondence)

Certificate of Transmission

I hereby certify that this Transmittal Letter, accompanying documents and fee authorization (if appropriate) is being facsimile transmitted to the United States Patent and Trademark Office on the date indicated below:

(Date of Transmission)

(Name of Person Transmitting Correspondence)

(Signature of Person Transmitting Correspondence)

Signature Instructions

Select the name of the person who will electronically sign the Transmittal Letter from the drop-down box below.

If a practitioner is not present in the drop-down list, you must close this form and select 'Add Practitioner...' in the Form Manager's Utility menu.

Verify that the signatory information is correct and press the 'eSign' button to electronically sign the submission. If you prefer to sign the form manually, simply do not click the 'eSign' button; just print and manually sign.

Signatory Drop-Down Box

Dunn, Michael L.

Name

Michael L. Dunn

Registration Number

25,330

Signatory Capacity

Attorney for Applicant(s)

E-mail Address

eSign

Date Signed

3/26/09